

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MAPLEWOOD AT UPPER EAST SIDE, LLC,	:	Index No. 17-cv-02914
	:	
Plaintiff,	:	
	:	<b>RULE 26(f) DISCOVERY</b>
- against -	:	<b><u>PLAN</u></b>
	:	
MALA SENDYK, AS ADMINISTRATOR OF	:	
THE ESTATE OF BENJAMIN SENDYK,	:	
SHARON SENDYK, AS ADMINISTRATOR OF	:	
THE ESTATE OF BENJAMIN SENDYK,	:	
CHICAGO TITLE INSURANCE COMPANY, as	:	
escrow agent/stakeholder, INTERIORS BY B&H,	:	
INC., and 1808 2 <sup>nd</sup> REALTY LLC,	:	
	:	
Defendants/Counterclaim-Plaintiff.	:	
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	:	
SHARON SENDYK AS ADMINISTRATOR OF	:	
THE ESTATE OF BENJAMIN SENDYK,	:	
	:	
Third-Party Plaintiff,	:	
	:	
- against -	:	
	:	
LEONARD RODNEY, ESQ. and LARRY	:	
GALLUS, CPA	:	
	:	
Third-Party Defendants	:	
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Pursuant to Fed. R. Civ. P. 26(f) (“Rule 26(f)”), the parties to this action, by and through their respective counsel, submit the following Rule 26(f) Discovery Plan. The Rule 26(f) conference was held telephonically on November 11, 2019 and was attended by Daniel Waxman, Esq. and Elizabeth Goldberg, Esq. of Bryan Cave Leighton Paisner LLP, counsel for Plaintiff Maplewood at Upper East Side LLC (“Maplewood” or “Plaintiff”), Anita Cohen, Esq., counsel for Sharon Sendyk, as Administrator of the Estate of Benjamin Sendyk, Leonard Rodney, Esq. of

The Law Office of Leonard Rodney counsel for Mala Sendyk, as Administrator of the Estate of Benjamin Sendyk and Third-Party Defendant Leonard Rodney, and John Lentinello, Esq. and Peter Seiden, Esq. of Milber Makris Plousadis & Seiden LLP, attorney for Third-Party Defendant Larry Gallus. The terms of the parties' discovery plan are as follows:

**1. Disclosures Under Fed. R. Civ. P. 26(a)**

The parties will exchange initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on or before December 9, 2019. At this time, the parties do not believe that any changes need to be made to the timing, form, or requirements for disclosure under Fed. R. Civ. P. 26(a)(2) (Disclosure of Expert Testimony) or Fed. R. Civ. P. 26(a)(3) (Pretrial Disclosures).

**2. The Subject Matter, Completion, And Phasing Of Discovery**

With respect to the subjects on which discovery will be sought, Plaintiff seeks discovery related to: (1) the Tax Contribution Agreement made as of July 24, 2015 (the "Contribution Agreement") entered into by the Estate of Benjamin Sendyk (the "Estate"), 1808 2<sup>nd</sup> Realty LLC ("1808 Realty"), Interiors By B&H, Inc. and Maplewood, including the negotiation and terms thereof and communications among the parties related to the Contribution Agreement; (2) the Escrow Agreement dated July 24, 2015 entered into by the Estate, Maplewood and Chicago Title Insurance Company (the "Escrow Agreement"), including the negotiation and terms thereof and communications among the parties related to the Escrow Agreement; (3) the preparation and filing of the Estate's tax returns concerning the sale of 1808 Second Avenue, New York, New York (the "Property"); (4) communications between the Estate and the Internal Revenue Service and/or any state or local taxing authority regarding the filing of the Estate's tax returns or the Estate's tax liability from the sale of the Property; (5) the tax consequences arising from the sale of the Property; (6) the contemplated or anticipated gain the Estate recognized as a result of the

sale of the Property; (7) the provision of the Estate's tax returns to Maplewood and/or 1808 Realty; (8) the amounts deposited into and withdrawn from the escrow account established by the Escrow Agreement; and (9) Maplewood's request that its contribution into escrow be released pursuant to Maplewood's April 3, 2017 release notice.

Defendant Sharon Sendyk seeks discovery related to all communications, written and oral, between Plaintiff and Third-Party Defendants dealing with the negotiation, drafting and execution of the Contribution Agreement and the Escrow Agreement and the preparation and filing of the Estate's tax returns concerning the sale of the Property.

Third-Party Plaintiff Sharon Sendyk seeks discovery related to all communications, written and oral, between Third-Party Defendants and between Third-Party Defendants and Defendants dealing with the Contribution Agreement, the Escrow Agreement and the preparation and filing of the Estate's tax returns concerning the sale of the Property.

Defendant Mala Sendyk seeks discovery related to all (1) the same subjects that will be sought by Plaintiff; (2) changes that Plaintiff would have made to the Estate tax returns if provided at an earlier date; (3) the manner in which Plaintiff was prejudiced by Defendants allegedly not providing copies of the Estate tax returns in a timely manner; (4) any damages allegedly suffered by Plaintiff; (5) communications between Defendant Sharon Sendyk or her attorney Anita Cohen with Third-Party Defendant Larry Gallus; and (6) all communications, written and oral, between Plaintiff and Third-Party Defendants dealing with the negotiation, drafting and execution of the Contribution Agreement and the Escrow Agreement and the preparation and filing of the Estate's tax returns concerning the sale of the Property.

Third-Party Defendant Leonard Rodney will seek discovery related to (1) the same subjects that will be sought by Plaintiff; (2) communications between Third-Party Defendant

Larry Gallus and any party and/or their legal representative; (3) Defendant Sharon Sendyk and her legal representative assuming the duties and responsibilities as Administrator of the Estate as of July 27, 2016; and (4) all communications, written and oral, between Third-Party Defendants and Defendants dealing with the Contribution Agreement, the Escrow Agreement and the preparation and filing of the Estate's tax returns concerning the sale of the subject Property.

Third-Party Defendant Larry Gallus will seek discovery with respect to, and related to, tax returns, preparation of tax returns, the Contribution Agreement and requirements and obligations thereunder, the Escrow Agreement, roles and responsibilities of the respective parties regarding the Contribution Agreement, drafting of, and components of all agreements among the parties, indemnification, novation of agreements and obligations thereunder, estate taxes, and allegations of professional malpractice in preparation of tax returns. Gallus will also seek discovery related to the same subjects that will be sought by Third-Party Plaintiff and Third-Party Defendant Leonard Rodney.

The parties have agreed that discovery in this action will be phased with fact discovery to be completed by May 1, 2020, and expert discovery to be completed by June 15, 2010. Third-Party Larry Gallus anticipates that expert discovery will be required subsequent to completion of fact discovery if the action cannot be resolved by settlement or resolution of all claims prior to the completion of fact discovery.

### **3. Electronic Discovery**

The parties have discussed the need for electronic discovery and, at this time, have not identified any particular issues concerning the forms in which such discovery should be produced that require the Court's attention.

**4. Assertions of Privilege**

The parties agree that any claim of privilege or attorney work-product shall comply with Rule 26.2 of the Local Rules of the United States District Court for the Southern and Eastern Districts of New York (“Local Rules”).

**5. Changes To The Limitations On Discovery Imposed By The Federal Or Local Rules**

The parties do not contemplate any changes in the limitations on discovery imposed under either the Federal Rules of Civil Procedure or the Local Rules.

Dated: November 25, 2019

Respectfully submitted:

BRYAN CAVE LEIGHTON PAISNER LLP

ANITA COHEN

By: /s/ Daniel P. Waxman

By: /s/ Anita Cohen

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